

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

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|---------------------------|---|--------------------------------|
| HEATHER MARVIN, |) | |
| |) | |
| Petitioner |) | |
| |) | |
| v. |) | Cause No.: 3:11-CV-29 RM |
| |) | (arising out of 3:10-CR-53 RM) |
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Respondent |) | |

OPINION AND ORDER

The court construes Heather Marvin's letter of February 22, 2011, challenging the court's January 27 order denying her petition under 28 U.S.C. § 2255, as a notice of appeal and as a motion for leave to proceed *in forma pauperis* on appeal and for a certificate of appealability.

Issuance of a certificate of appealability requires the court to find that Ms. Marvin has made "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 336 (2003). This means she must show "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" Miller-El v. Cockrell, 537 U.S. at 336. For the reasons stated in the Opinion and Order of January 27, 2011 denying her habeas petition, Ms. Marvin is far from meeting that burden. Counsel's performance in this case was, without doubt, objectively reasonable and in no way prejudicial to Ms. Marvin's defense.

See Strickland v. Washington, 466 U.S. 668, 687 (1984). Accordingly, Ms. Marvin's motion for a certificate of appealability is denied.

Federal Rule of Appellate Procedure 24(a)(3) provides that a financially indigent person may be permitted to proceed on appeal *in forma pauperis* unless the court "certifies that the appeal is not taken in good faith." In other words, the court must decide "that a reasonable person could suppose that the appeal has some merit." Walker v. O'Brien, 216 F.3d 626, 632 (7th Cir. 2000). Because no reasonable person could find that Ms. Marvin's appeal has any merit, the court concludes that her appeal is not taken in good faith, and her request for pauper status must be denied.

Based on the foregoing, Ms. Marvin's motion for leave to proceed *in forma pauperis* on appeal and for a certificate of appealability is DENIED.

SO ORDERED.

ENTERED: March 2, 2011

/s/ Robert L. Miller, Jr.
Judge
United States District Court

cc: H. Marvin
H.J. Stevens
F. Schaffer